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Dollars and Sense: A Summary of the Financial Responsibility Regulations for Underground Storage Tank Systems

(U.S.) Environmental Protection Agency, Washington, DC

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The U.S. Environmental Protection Agency has published final regulations concerning financial responsibilities for owners and operators of underground storage tank systems containing petroleum. This booklet provides a brief summary and answers some important questions about their financial responsibilities. The complete regulations were published in the Federal Register on October 26, 1988; Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements and State Program Approval Objective; Final Rule 40 CFR Parts 280 & 281.

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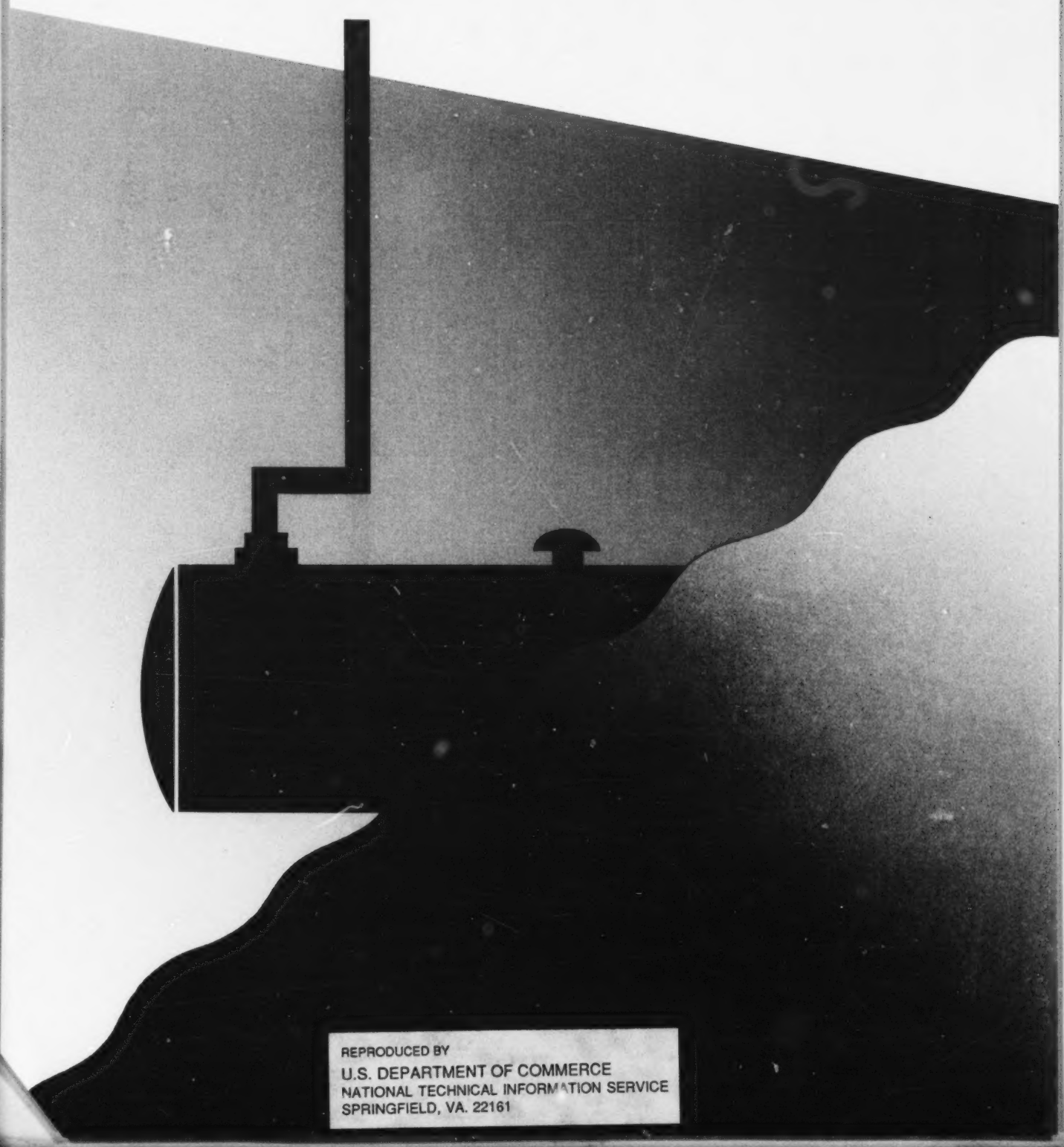
Dollars and Sense



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DOLLARS AND SENSE

A Summary of the Financial Responsibility Regulations for Underground Storage Tank Systems

U.S. Environmental Protection Agency
Office of Underground Storage Tanks

December 1988

NOTICE

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WHAT ARE THESE REGULATIONS ALL ABOUT?

The U.S. Environmental Protection Agency (EPA) has published final regulations concerning financial responsibilities if you own or operate underground storage tank systems containing petroleum. (EPA plans to develop similar regulations for tanks containing hazardous substances in the future.) Although the full regulations appear in the Federal Register (October 26, 1988), this brochure provides a brief summary and answers some important questions about your financial responsibilities.

Why Has EPA Written These New Regulations?

Several million underground storage tank systems (USTs) in the United States contain petroleum. Tens of thousands of these USTs, including their piping, are currently leaking. Many more are expected to leak in the future. Leaking USTs can cause fires or explosions that threaten human safety. In addition, leaking USTs can contaminate nearby ground water. Because many of us depend on ground water for the water we drink, Federal legislation seeks to safeguard our nation's groundwater resources.

Congress responded in 1984 to the problem of leaking USTs by adding Subtitle I to the Resource Conservation and Recovery Act. Subtitle I requires EPA to develop regulations to protect human health and the environment from leaking USTs and specifically mandates requirements for financial responsibility.

What Is "Financial Responsibility" And Why Is It Necessary For You?

Financial responsibility means that if you own or operate an UST, you must ensure, either through insurance or other means explained below, that there will be money to help pay for the costs of third-party liability and corrective action caused by a leak from your tank. These costs could include cleaning up leaked petroleum, correcting environmental damage, supplying drinking water, and compensating people for personal injury or property damage. Financial responsibility also protects you. If your UST leaks, you may be faced with high cleanup costs or with lawsuits brought by third parties. Having financial responsibility means that money will be available to meet these costs.

What Kinds Of Tanks Are Covered By The Rule?

Financial responsibility must be shown for all USTs containing petroleum products. USTs are defined by law to be tank systems with at least 10 percent of their volume below the surface of the ground. The term "tank systems" also includes the piping connected to the tank.

What Kinds Of Tanks Are Not Covered?

Some tank systems have been exempted or deferred from the financial responsibility rule:

- USTs containing hazardous wastes already regulated under RCRA.
- UST systems containing electrical equipment and hydraulic lifts.
- Wastewater treatment USTs that are regulated by the Clean Water Act.
- USTs with a capacity of less than 110 gallons, and tanks holding a minimal concentration of regulated substances.
- USTs that serve as emergency back up, hold regulated substances for only a short time, and are expeditiously emptied after use.
- Field-constructed tanks.
- USTs containing radioactive materials and USTs used as backup diesel tanks at nuclear facilities.
- Airport hydrant fueling systems.
- Farm or residential tanks with capacity of 1,100 gallons or less storing motor fuel which is not for resale.
- Tanks for storing heating oil which is used on-site.
- Septic tanks.
- Certain pipeline systems, such as those regulated under the Natural Gas Pipeline Safety Act of 1968.
- Surface impoundments, pits, ponds, or lagoons.
- Storm or waste water collection systems.
- Flow-through process tanks.
- Liquid trap and other lines used in oil or gas production.
- Storage tanks on or above the floor of an underground area, such as a basement or tunnel.

WHO IS AFFECTED BY THESE REGULATIONS?

Do You Have To Show Financial Responsibility?

Either the owner or the operator of the tank must show financial responsibility, but not both if the owner and operator are different individuals or firms. It is the responsibility of the owner and operator to decide which of them will show financial responsibility.

Federal and State governments and their agencies that own USTs are not required to document financial responsibility. Local governments, however, must comply with the new rule.

If you owned or operated a tank that was properly closed before the date for compliance that applies to you, then the financial responsibility requirements will not apply to your closed tank.

What Do You Have To Do?

The new financial responsibility regulations require you to show that you have one of the following:

- at least $1 million to cover the costs of a leak or spill from your underground storage tank if you are a **PETROLEUM MARKETER** (page 43334 of the Federal Register of October 26, 1988); or
- at least $500,000 if you are **NOT A MARKETER** (page 43330 of the Federal Register of October 26, 1988).

You may show that you have this coverage by using insurance or any of the other methods of coverage explained in this brochure. The amount of financial responsibility that you must show does not limit your total liability for damages caused by a leak from your tank system.

When Must You Comply With The Financial Responsibility Requirements?

The rule takes effect 90 days after its publication in the Federal Register (i.e., January 24, 1989). The date when you will have to show financial responsibility, however, depends on the compliance category that you fall into, as shown below:

- If you fall into one of the following groups, you must show financial responsibility on the same day that the rule becomes effective on January 24, 1989: 1) petroleum marketing firms that own 1,000 or more USTs; and 2) any other UST owners that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration.
- If you are a petroleum marketing firm that owns 100 to 999 USTs, you must show financial responsibility by October 26, 1989.
- If you are a petroleum marketing firm that owns 13 to 99 USTs at more than one site, you must show financial responsibility by April 26, 1990.
- If you fall into one of the following groups, you must show financial responsibility by October 26, 1990: 1) petroleum marketing firms owning 1 to 12 USTs or those having fewer than 100 USTs at one site; 2) all other UST owners with a tangible net worth of less than $20 million; and 3) local governments.

What Happens If You Install A New UST Before Your Scheduled Compliance Date?

The regulations require that you show financial responsibility for a new UST when you notify EPA that you have installed the tank. If you install a new UST before the date when you must first show financial responsibility as described above, then you must only show financial responsiblity for the new tank by that compliance date. You may ignore the line on the new tank notification form concerning financial responsibility.

What Amount Of Money Are You Responsible For?

The amount of money for which you must show financial responsibility depends on the type of business you operate, the amount of throughput of your tank, and the number of tanks you have:

- If your tank is used in petroleum production, refining or marketing (for example, service stations and truck stops), then you must be able to show that you have $1 million of "per occurrence" coverage. "Per occurrence" means the amount of money that must be available to pay the costs of one occurrence.

- You must also have coverage for an annual aggregate amount. The annual aggregate amount is the total amount of financial responsibility that you must have to cover all leaks that might occur in one year. The amount of aggregate coverage that you must have depends on the number of tanks that you own or operate. The annual aggregate limits are:

  -- 1 to 100 tanks, $1 million annual aggregate; or
  -- 101 or more tanks, $2 million annual aggregate.

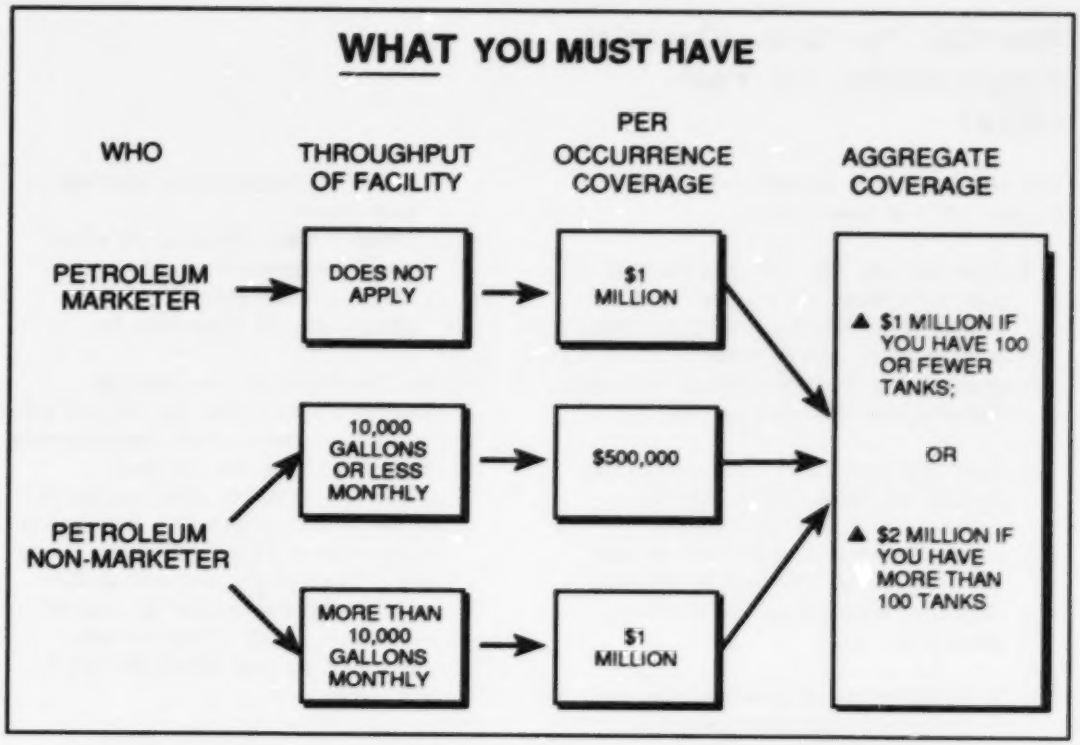
For example, if you own or operate three service stations with a total of 18 tanks, then you must have financial responsibility in the amount of $1 million per occurrence and $1 million annual aggregate. If you own or operate 50 service stations with a total of 200 tanks, you must have financial responsibility in the amount of $1 million per occurrence and $2 million annual aggregate.

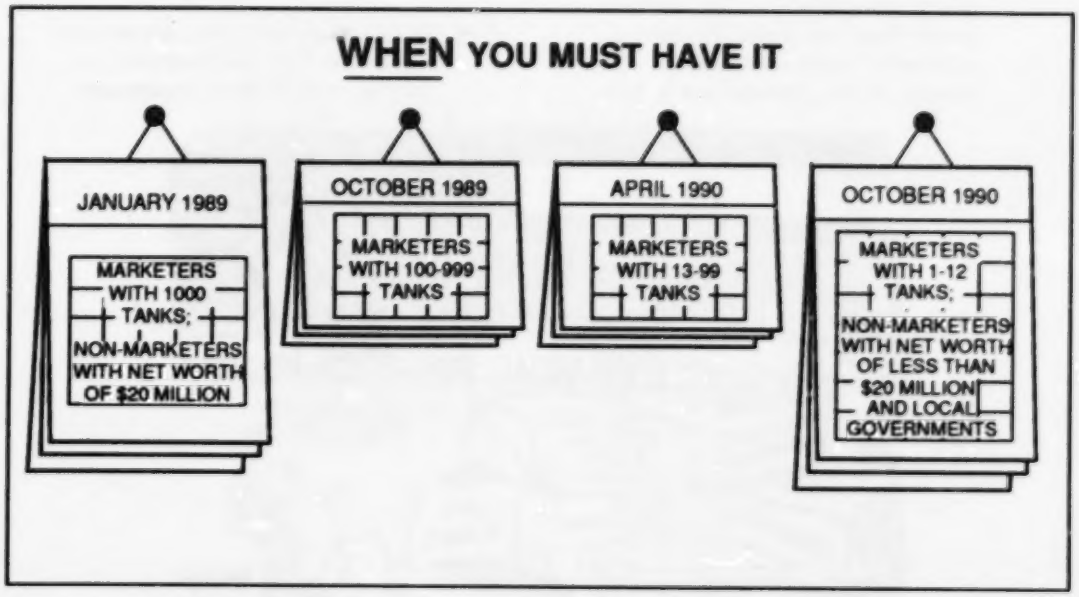
- If your tanks are located at a facility not engaged in petroleum production, refining or marketing, and your facility has a monthly throughput of more than 10,000 gallons, then you must show that you have $1 million of "per occurrence" coverage. If the facility has a monthly throughput of 10,000 gallons or less, then you must show that you $500,000 of "per occurrence" coverage and $1 million or $2 million of annual aggregate coverage depending on the number of tanks you own or operate, as discussed above.

For example, if you are an automobile dealer with four small tanks with a total monthly throughput of 10,000 gallons, then you would only need to have financial responsibility in the amount of $500,000 per occurrence and $1 million annual aggregate. If you have 30 dealerships with a total of 110 tanks, you would need to have financial responsibility in the amount of $500,000 per occurrence, but you would need $2 million annual aggregate.

The chart on page 5 displays these financial responsibility requirements.

IMPORTANT REQUIREMENTS AND MINIMUM DEADLINES FOR YOUR FINANCIAL RESPONSIBILITY




WHEN YOU MUST HAVE IT
JANUARY 1989
MARKETERS WITH 1000 TANKS;
NON-MARKETERS WITH NET WORTH OF $20 MILLION
OCTOBER 1989
MARKETERS WITH 100-999 TANKS
APRIL 1990
MARKETERS WITH 13-99 TANKS
OCTOBER 1990
MARKETERS WITH 1-12 TANKS;
NON-MARKETERS WITH NET WORTH OF LESS THAN $20 MILLION AND LOCAL GOVERNMENTS

HOW DO YOU COMPLY WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS?

How Can You Show Financial Responsibility For Your USTs?

You can demonstrate financial responsibility for your USTs in several ways:

- Show that your firm can meet the costs of potential releases. If your firm has a tangible net worth of at least $10 million, you can prove your financial responsibility by passing one of these two **financial tests** described on page 15.

- Show that someone else is responsible for cleanup and damage costs. You may arrange to have someone else be responsible for paying the costs of leaks from your USTs. This may be done in a number of ways (all are described in detail in the rule):

  1. Obtain **insurance coverage** from an insurer or a **risk retention group** (page 8); or
  2. Obtain a **guarantee** for the amount you are responsible for from a corporate parent, grandparent, sibling, or from another firm with whom you have a substantial business relationship. The provider of the guarantee has to pass one of the financial tests described on page 15; or
  3. Obtain a **surety bond** for the amount you are responsible for; or
  4. Obtain a **letter of credit** for the amount you are responsible for.

- Use **State funds**. If your State has established a State fund that will pay for the cleanup costs of a leak from your tank systems, then you may not need additional coverage to show you can pay for the same costs (page 7). You need to check to see if the State fund covers your tanks. You may also still need to show financial responsibility for the costs of compensating those injured by leaks, unless the State fund would also pay for those costs.

- Use **State approved methods**. You may also use any method of coverage approved by your State.

- Set up a **trust fund**. You may set up a fully-funded trust fund to cover your financial responsibility requirement.

Can You Use A Combination Of Methods To Show Financial Responsibility?

You may also use a combination of methods to show financial responsibility. The methods you choose must cover all the costs that you are responsible for (both third-party liability and corrective action) and add up to the amount of coverage you are required to show. If the methods you choose cover different costs (for example, the insurance policy covers damages to other people and property and the guarantee covers cleanup costs), then each method must provide the total amount of responsibility that you must demonstrate.

What About State Funds?

Some States have established programs to pay for cleanup costs from petroleum leaks. These State funds often may be used by owners and operators of USTs to demonstrate financial responsibility. In most States, however, funds will pay only part of cleanup costs. In addition, few States will pay for third-party damages caused by petroleum leaks.

You should contact your State environmental agency to determine if the State has a fund that you may use to show financial responsibility. Find out what the State will pay for and what amount of financial responsibility you must obtain. In several States, for example, you must demonstrate financial responsibility for the first $100,000 of cleanup costs before the State will demonstrate financial responsibility for the remaining costs. Most State funds will not pay more than $1 million per occurrence.

If you don't know how to reach your State Coordinator, call EPA's Hotline for the phone number of your State Coordinator (1-800-424-9346)

What Happens If Your Coverage Is Cancelled?

If your method of financial responsibility is cancelled, you must find another mechanism to replace it within 60 days after you receive the notice of cancellation. If you cannot get another mechanism in that time, then you must notify the implementing Agency or the State.

Your coverage or insurance contract must specify that the provider of coverage or insurance may only cancel your coverage by sending you a notice by certified mail. For guarantees, surety bonds, or letters of credit, cancellation can only occur 120 days after you receive the notice. Insurance policy coverage can be cancelled 60 days after you receive the notice.

Can You Get Private Insurance Coverage For Your USTs?

Private insurance coverage for USTs is still limited, but there are several major insurers who offer policies. Insurers are often selective in the tanks they will cover. If you want to purchase insurance, you may be required to meet certain conditions for coverage. For example, your insurer may ask you to test your tank for tightness, or he may require certain improvements in your tank system, such as liners, cathodic corrosion protection, and leak detection. Some insurers simply will not provide coverage for certain types of tanks, like tanks that are more than 20 years old.

You may also be able to get insurance coverage through a risk retention group. A risk retention group is an insurance company formed by businesses or individuals with similar risks to provide insurance coverage for those risks. To join a risk retention group, you will probably be asked to make a one-time payment -- called a capital contribution -- and thereafter pay annual premiums as with any other insurance policy.

If you are interested in purchasing insurance through either a private insurer or a risk retention group to show financial responsibility for your USTs, you should contact your insurance agent. You may want to take with you the sample Endorsement or Certificate of Insurance that appear on pages 11 and 12. These documents are examples of policies that meet EPA financial responsibility requirements. If you belong to a trade association, it may also be able to provide you with information about insurers and risk retention groups that cover USTs.

WHAT RECORDS MUST YOU KEEP OR FILE WITH THE IMPLEMENTING AGENCY?

You must keep records of the type of coverage you have at your tank site or your place of business. In addition, you must maintain a certification of financial responsibility (see page 10). You must keep both of these records until your tanks are properly closed.

You only need to report and/or file copies of these records with EPA in the following cases:

- You install a new tank system.
- You have confirmed that a tank system is leaking.
- You receive notice that a method of coverage you have will be cancelled or will not provide sufficient coverage, and you are unable to get other coverage.
- EPA or a State agency requests your records.

SAMPLES OF FINANCIAL RESPONSIBILITY FORMS

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subpart H of 40 CFR Part 280.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Subpart H of 40 CFR Part 280 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial insurance mechanism(s) used to demonstrate financial responsibility change(s).

SAMPLE

ENDORSEMENT

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's of Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy].

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" of "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states".]

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized

DRAFT

CERTIFICATE OF INSURANCE

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tanks(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's of Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy].

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states".]

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

SAMPLE

VIDEOS, BROCHURES, AND HANDBOOKS ON USTs

Videos

"A Question of When: Tank Installation for Inspectors"

"In Your Own Backyard" -- An Overview of Installation for Tank Owners.

Available for purchase only, $22.85 each, prepaid, from:

National Fire Protection Association
Attn: Jim Smalley
Batterymarch Park
Quincy, MA 02269

"Doing It Right" -- Proper Tank and Piping Installation Methods for Installers, Owners, and Operators. Available for purchase only, $16.00, prepaid, from:

American Petroleum Institute
1220 L Street, N.W.
Washington, D.C. 20005

Petroleum Equipment Institute
Box 2380
Tulsa, OK 74101

"Tank Closure Without Tears: An Inspector's Safety Guide" -- Covers Important Safety Aspects of Tank Removal, Especially Dealing with Flammable and Explosive Vapors.

Video and companion booklet available for purchase, $25.00, prepaid. Booklet only, $5.00, prepaid, from:

New England Interstate Water
Pollution Control Commission
Attn: VIDEOS
85 Merrimac Street
Boston, MA 02114

Video and companion booklet available for loan, $5.00, prepaid, from:

New England Regional Wastewater Institute
Two Fort Road
South Portland, ME 04106

Slide Show

"Tank Talk: The New National Rules" -- 30 Minute Overview of the New Federal Regulations. Slide show and narration available for loan, from:

EPA/Atlis
301-770-3000 ext. 503
Attention: Barbara McCoy

Brochures

"Musts for USTs" -- A Summary of the New Regulations for Underground Storage Tank Systems

"Oh No!" -- Corrective Action Brochure (Available February 1989)

"Leak Lookout" -- Using External Leak Detectors to Prevent Petroleum Contamination from Underground Storage Tanks

These brochures may be ordered from:

U.S. Environmental Protection Agency
Office of Underground Storage Tanks
P.O. Box 6044
Rockville, MD 20850

Handbooks

"Financial Assurance Programs: A Handbook for States"

"Funding Options for State and Local Governments"

"Underground Storage Tanks: Building State UST Compliance Programs"

These handbooks may be ordered from:

U.S. Environmental Protection Agency
Office of Underground Storage Tanks
P.O. Box 6044
Rockville, MD 20850

"Cleanup of Releases from Petroleum USTs: Selected Technologies" -- Available for purchase, Stock No. 055-000-00272-0, $7.50 prepaid, from:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

FINANCIAL TEST OPTIONS

Test I

a. Your firm must have a tangible net worth of at least $10 million; and
b. Your firm must have a tangible net worth of at least 10 times the amount of aggregate coverage that you are required to demonstrate plus any other liability coverage for which your firm is using the test to demonstrate financial responsibility to EPA; and
c. Your firm must file the firm's annual financial statements with the Securities and Exchange Commission (SEC), or annually report the firm's tangible net worth to Dun and Bradstreet and receive a rating of 4A or 5A. Utilities may file financial statements with the Energy Information Administration, or the Rural Electrification Administration instead of the SEC; and
d. Your firm must have audited financial statements that do not include an adverse auditor's opinion or disclaimer of opinion.

Test II

a. Your firm must have a tangible net worth of at least $10 million; and
b. Your firm must have a tangible net worth of at least 6 times the amount of aggregate coverage that you are required to demonstrate; and
c. Have U.S. assets that are at least 90 percent of total assets or at least 6 times the required aggregate amount; and
d. Have net working capital at least 6 times the required aggregate amount; and
e. Have a bond rating of AAA, AA, A, or BBB from Standard and Poor's, or Aaa, Aa, A, or Baa from Moody's; and
f. Your firm must have audited financial statements that do not include an adverse auditor's opinion or disclaimer of opinion.